

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the Verizon Local and Long)	
Distance Telephone Companies for)	WC Docket No. 06-56
Forbearance Under 47 U.S.C. §160(c) with)	
Regard to Certain Dominant Carrier Regulations)	
for In-Region, Interexchange Services)	

In the Matter of)	
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Petition of the Verizon Local and Long)	
Distance Telephone Companies for Interim)	WC Docket No. 06-56
Waiver with Regard to Certain Dominant)	
Carrier Regulations for In-Region,)	
Interexchange Services)	

**COMMENTS OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**

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On the Comments:

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Date: April 20, 2006

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I. INTRODUCTION

In response to the Public Notice released on March 31, 2006,¹ the New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) hereby submits its comments as to DA 06-618 and Verizon Telephone Companies’ (“Verizon”) petitions asking for forbearance and waiver with regard to certain Federal Communications Commission’s (“FCC” or Commission”) rules regarding dominant carrier regulations for

¹/ See Public Notice, DA-06-618, dated March 31, 2006, establishing pleading cycle with Comments due on April 2, 2006 and reply comments due on May 1, 2006.

in-region, Interexchange services.

BACKGROUND

On February 28, 2006, Verizon filed two petitions seeking relief from certain dominant carrier regulations for in-region, interexchange services that would otherwise apply to Verizon's provision of those services in the former Bell Atlantic region after March 19, 2006, when the requirements of section 272 of the Act sunset with respect to the final three Verizon states. One petition seeks an interim waiver of certain dominant carrier regulations.² The other seeks forbearance under 47 U.S.C. § 160(c) with regard to the same regulations.³

The regulations that Verizon seeks an interim waiver of or forbearance from include the following:

- section 203 of the Act, 47 U.S.C. § 203;
- dominant carrier tariffing requirements set forth in part 61 of the Commission's rules (sections 61.28, 61.32, 61.33, 61.38, 61.58 and 61.59);
- price cap regulation set forth in part 61 of the Commission's rules (e.g., 47 C.F.R. §§ 61.41 – 61.49);
- the Commission's accounting requirements to the extent that they require nonregulated treatment of interexchange services if Verizon decides to provide them on an integrated basis;
- the Commission's *Computer III* requirements including Comparably Efficient Interconnection and Open Network Architecture requirements;
- certain provisions in Part 63 of the Commission's rules concerning acquiring lines, discontinuing services, transfers of control, and acquiring affiliates (e.g., 47 C.F.R. §§ 63.12(b)(2), 63.19(b), 63.21(c), 63.71(c)); and

²/ See Petition of Verizon For Interim Waiver of Certain Dominant Carrier Regulations for In-Region, Interexchange Service, WC Docket No. 06-56 (filed Feb. 28, 2006).

³/ See Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) With Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Service, WC Docket No. 06-56 (filed Feb. 28, 2006).

- rules governing independent local exchange carriers' provision of in-region, interstate, interexchange and international services, 47 U.S.C. §§ 64.1901 – 64.1903.

SUMMARY

The two petitions filed by Verizon are without merit and should be denied. The forbearance petition lacks empirical and evidentiary support and offers mere conclusions in support of the petition. As discussed more fully below, there are Constitutional infirmities with 47 U.S.C. § 160 (Section 10 of the Federal Telecommunications Act of 1996). These infirmities preclude exercise of forbearance by the FCC. The waiver petition improperly seeks interim relief that in the first instance requires a rulemaking and not a waiver. In addition, as Verizon correctly notes, there is a pending rulemaking addressing what is the appropriate regulatory classification of Bell Operating Companies and independent local exchange carriers.⁴ Verizon's waiver request seeks to change the status quo and effectively prejudge the outcome of the ongoing rulemaking. This alone justifies denial of the waiver. Verizon has also failed to demonstrate "good cause" for its waiver requests. As a result, neither the waiver requests nor the forbearance request is in the public interest or in the interest of consumers.

II. INTEREST OF THE RATEPAYER ADVOCATE IN THE INSTANT PROCEEDING.

The Ratepayer Advocate is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Ratepayer Advocate participates actively in relevant Federal and state administrative and judicial proceedings.

⁴/ See Section 272(f)(1) *Sunset of the BOC Affiliate and Related Requirements, Notice of Proposed Rulemaking*, 17 FCC Rcd 9916 (2002); Section 272(f)(1) *of the BOC's Separate Affiliate and Related Requirements, Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10914 (2003 ("272 Sunset NPRM").

III. THE COMMISSION SHOULD DENY VERIZON'S FORBEARANCE REQUEST

Verizon asks that the Commission forbear from certain aspects of dominant carrier regulation that would apply to Verizon's provision of in-region interexchange services when the structural separation requirements imposed by Section 272 of the Act sunset. According to Verizon, this request is based upon a concern that Verizon may want to integrate its local and long distance operations after the sunset of Section 272. Verizon is asking for relief when in fact no decision has been made to integrate its operation. This alone justifies denial of the petition.

In addition, the Ratepayer Advocate submits that the requested forbearance is based upon mere ultimate conclusions without empirical or evidentiary support. The record shows that Verizon has been successfully competing in the interexchange marketplace in the presence of structural safeguards. In addition, the marketplace has changed with the two largest interexchange carriers now owned by Verizon and AT&T (formally SBC Communications). This undercuts the unsupported assertions that relief is warranted. Verizon has simply failed to show that continued regulation is not necessary for the protection of consumers and that elimination of regulation is otherwise in the public interest. The Ratepayer Advocate submits continued regulation of Verizon is both in the consumers' interest and the public interest. In comments and reply comments in the *272 Sunset NPRM*, the Ratepayer Advocate demonstrated the reasons as to why continued regulation is necessary and appropriate. The Ratepayer Advocate incorporates by reference those filing in the *272 Sunset NPRM*.⁵

⁵/ See comment filed on June 30, 2003 and reply comment filed on July 28, 2003.

Notwithstanding the fact that the forbearance petition is without merit and should be denied by the Commission based on the reasons discussed above, the Ratepayer Advocate renews the arguments and incorporates those arguments attached hereto with respect to the constitutional infirmities associated with the Commission's forbearance authority. Specifically any exercise of the forbearance authority contained in Section 10 of the Act violates separation of powers, equal protection, 10th Amendment, and 11th Amendment as outlined in detail in our Ex Parte filing dated December 7, 2004 in the UNE Remand proceeding (CC Docket No. 01-338 and WC Docket No. 04-313).

IV. THE COMMISSION SHOULD DENY VERIZON'S WAIVER REQUESTS.

The Ratepayer Advocate submits that Verizon has failed to justify, demonstrate and show good cause for the grant of the requested waivers.

The Commission may waive its regulations for good cause shown.⁶ Verizon has failed to provide empirical evidence to support its claims that tariffing requirements impose increased costs on Verizon and affect its ability to compete.⁷ Verizon's argument is that it is unfair to impose tariffing requirements on a few competitors is flawed. The simple solution is to apply appropriate safeguards to all competitors whether intermodal or intramodal competitors. Those safeguards would mirror the safeguards established by the FCC in order for a carrier to be classified as non-dominant. See Ratepayer Advocate's comments in the 272 Sunset NPRM at 3-5.

⁶ / 47 C.F.R. § 1.3

⁷ / See *Verizon's Memorandum of Points and Authorities In Support of Verizon's Petitions for Interim Waiver or Forbearance* at page 27.

Verizon's call for waiver of price cap regulation is premised upon that if in the future they decide to operate on an integrated basis, they would be subject to price cap regulation. Again they seek relief without a concrete decision to operate on an integrated basis. Verizon's additional argument that because other interexchange carriers are not subject to price cap regulation, it should not be, overlooks the fact that the competitive landscape has changed due to the acquisition of MCI by Verizon and the acquisition of AT&T by SBC Communications. The Ratepayer Advocate submits that price cap regulation reduces the incentive to allocate improperly the costs of affiliates' interLATA services.⁸

Verizon's arguments in support of the elimination of accounting requirements that would result in-region interexchange services being treated as non-regulated is equally flawed for the reasons discussed above. This is another situation in which Verizon claims burdensome costs and claims that so called asymmetric regulation impedes robust competition. The record simply shows otherwise. More importantly, Verizon has offered no quantification of the costs affects associated with in-region interexchange services being treated as regulated or non-regulated services. Similarly, there has been no showing how the designation of in-region interexchange services would affect the rates that are subject to price cap regulation.

^{8/} See Ratepayer Advocate Reply Comments at 9 in the 272 *Sunset NPRM*, wherein Verizon acknowledges that price cap regulations reduces incentives to improperly allocate costs.

Moreover, it is unclear what effect, if any, the FCC's current separation freeze⁹ in effect since 2001 has on current price caps and how the classification of in-region interchange services as regulated or non-regulated affects the separations process. With the numerous and major changes in the telecommunications marketplace (such as the granting of Section 271 authority, the classification of digital subscriber line ("DSL") and cable modem as informational services, the classification of VoIP as an interstate service, pending proposals to revise intercarrier compensation, and proposed universal service reform), it is premature to address Verizon's waiver requests.

Verizon's other arguments as to why other waivers are appropriate and necessary are equally flawed and fail to demonstrate special circumstances warranting a deviation from the status quo, and a finding that a grant of the waivers will serve the public interest.¹⁰ For the reasons discussed above, Verizon has failed to demonstrate "good cause" to support the relief requested.

⁹/ *TR Daily*: "Incumbent local exchange carriers (ILECs) today told the FCC that its request for input on a proposed request for data relating to the jurisdiction separations process didn't provide enough details on what the Commission planned to ask." (Monday, May 9, 2005).
See: <http://www.tr.com/online/trd/2005/td050905/index.htm>

¹⁰/ *Northeast Cellular Telephone Co. v. FCC* 897 F. 2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969)).

V. CONCLUSION

The Commission should not grant Verizon's request for waivers, or grant forbearance. Ultimately, the grant of any relief would harm ratepayers and remove or eliminate appropriate competitive safeguards. Such a result is manifestly unjust to ratepayers and contrary to the public interest. Therefore the Ratepayer Advocate urges that the FCC deny the two petitions.

Respectfully submitted,

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Dated: April 20, 2006